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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1999

Addendum

GUATEMALA*

[3 February 2000]

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* The initial report submitted by the Government of Guatemala is contained in documents CAT/C/12/Add.5 and 6; for its consideration by the Committee, see documents CAT/C/SR.232 and 233/Add.1 and 3 and Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44, paras. 42-57). For the second periodic report, see CAT/C/29/Add.3; for its consideration, see CAT/C/SR.324 and 325 and Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44, paras. 157-166).

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Introduction

1. The State of Guatemala submits its third periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the honourable members of the Committee against Torture. This report covers the period from 1 April 1998 to 31 December 1999. It also contains information dating from before that period, which was not provided to the Committee in earlier reports.

2. The first part of the report details measures and facts relating to the implementation of the Convention, following the order of the articles of the Convention.

3. The second part describes progress in implementing the conclusions and recommendations made by the Committee during its consideration of Guatemala's second periodic report (CAT/C/29/Add.3) at its 324th and 325th meetings, held on 7 May 1998 (CAT/C/SR.324 and 325).

GENERAL SITUATION

4. Three years after concluding a firm and durable peace, the State of Guatemala is going through an intensive process of the consolidation of peace and political, economic and social reconstruction. In this context, the 11 agreements on various subjects signed as part of the peace negotiations and the 179 commitments they contain have resulted in six major structural transformations in Guatemala: the consolidation of democracy; the restructuring of national security and defence; the reform and modernization of the State; the fundamental reorientation of public investment strategies; the construction of a multicultural, multi-ethnic and multilingual nation; and reform of fiscal policy and practice.

5. Important changes have taken place: political exclusion became a thing of the past with the registration of the Guatemalan National Revolutionary United Front (URNG) as a political party in 1998; and indigenous peoples can now participate more fully in public life, chiefly through the 15 multisectoral commissions set up under the Peace Accords, some of which have already submitted reports. In addition, 43,000 refugees, mainly in Mexico, have returned to the co ntry; a land fund has been set up and is now the main mechanism for helping landless peasants to gain access to land ownership; infant mortality rates fell from 51 per thousand to 45 per thousand in 1995-1998; illiteracy rates fell from 37 per cent in 1995 to 31.7 per cent in 1998; a commitment to increase the judiciary's budget by 50 per cent from 1995 has been honoured; an ad hoc commission has been established to implement the recommendations of the Commission on the Strengthening of the Justice System; the Public Prosecutor's Office has begun implementing its global restructuring plan and the Public Criminal Defence Institute became financially independent on 11 January 1999, thereby making it possible to extend its coverage; and an Office for the Defence of Indigenous Women was created in July 1999.

6. These achievements are a result of the Government's desire to honour the commitments contained in the Peace Accords. There are still, however, areas and issues where no great or significant progress has been made, despite great efforts and a willingness to bring about positive change.

7. From another standpoint, it could be said that the challenge facing the State, and particularly its constituent bodies, is to maintain and press on with the transition process, since it is undoubtedly only by promoting and consolidating peace that it will be possible to create a climate conducive to the enjoyment and exercise of human rights in Guatemala. In this regard, there has been a considerable reduction in the kind of human rights violations, such as torture, enforced disappearance and extrajudicial executions, that resulted from the armed internal conflict and the isolated cases that are confirmed by the United Nations Human Rights Verification Mission in Guatemala (MINUGUA) are investigated by the competent authorities in order to clear them up and take measures to prevent them happening again.

I. INFORMATION ON MEASURES TO IMPLEMENT THE CONVENTION

Article 2. Legislative, administrative, judicial or other measures to prevent acts of torture

Legislative measures

8. In order to protect the physical and mental integrity of detained persons or prisoners, the Constitution of the Republic of Guatemala states:

"Article 3. The right to life. The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person.

Article 8. The rights of arrested persons. Every arrested person must be immediately informed of his rights in a manner understandable to him, and particularly of the fact that he may avail himself of a legal counsel, who may be present at all police and judicial proceedings. An arrested person shall not be obliged to make a statement, except before a competent judicial authority.

Article 9. Interrogation of arrested persons and prisoners. The judicial authorities alone are competent to interrogate arrested persons and prisoners. Their interrogation must take place within a period of not more than 24 hours.

Article 19. The penitentiary system. The penitentiary system must aim at the social rehabilitation and reformation of prisoners and the following minimum rules must be observed in their treatment:

(a) Prisoners must be treated as human beings; they must not be discriminated against on any grounds and they may not be subjected to cruel treatment, physical, moral or psychological torture, coercion or harassment, labour incompatible with their physical condition or treatment impairing their dignity. Nor may they be subjected to extortion or scientific experiments;

(b) They must serve their sentences in places intended for this purpose. Penal institutions shall be civilian in character and staffed by specialized personnel; and

(c) Prisoners shall have the right to communicate, on request, with their relatives, their defence counsel, a chaplain or doctor and, where appropriate with the diplomatic or consular representative of their country.

Failure to observe any of the rules laid down in this article shall give a prisoner the right to claim compensation from the State for any damage caused and the Supreme Court of Justice shall order his immediate protection.

The State shall create and foster conditions for full compliance with the provisions of this article".

9. In addition, Congress has amended the Penal Code by Decree No. 58-95 of 10 August 1995, adding article 201 bis, which defines torture as an offence and lays down legal criteria for the prosecution of the offence and the penalty to be applied:

"Article 201 bis (Torture). The offence of torture is committed by anyone who, on orders from or with the authorization, support or acquiescence of the State authorities, intentionally inflicts pain or suffering, whether physical or mental, on another person for the purpose of obtaining from that person or a third person information or a confession concerning an act he has committed or by anyone who attempts to intimidate another person or, by so doing, other persons.

The offence of torture is also committed by the members of groups or organized gangs having terrorist, insurgent or subversive aims or any other wrongful purpose.

The consequences of action taken by a competent authority in the legitimate exercise of its duty and in order to safeguard public order shall not be considered as torture.

Anyone responsible for the offence of torture shall be liable to 25 to 30 years' imprisonment".

10. Furthermore, according to article 425 of the Penal Code:

"Abuses against individuals. Any public official or employee who orders the use of undue duress, torture, degrading punishment, humiliation or any measures not authorized by law against a prisoner or detainee shall be sentenced to from two to five years' imprisonment and general disqualification from office. The same sentence shall apply to those who carry out such orders".

11. Article 85 of the Code of Criminal Procedure states:

"Unlawful methods of obtaining a statement. The accused shall not be placed under oath, but simply warned to speak the truth. He shall not be subjected to any form of coercion, threat or promise, except in the form of warnings as explicitly authorized

under criminal or procedural law. No measures shall be used to compel, induce or oblige him to make a statement against his will and no charges or counterclaims shall be brought with the aim of obtaining a confession".

Other measures

12. The members of the Committee are referred to the descriptions of other measures taken to deter acts of torture, included in the remainder of this report.

Cases of torture

13. A number of cases of torture have been recorded by the Human Rights Procurator and MINUGUA. However, according to data from the Human Rights Procurator, no cases of torture were recorded during 1998. The statistics from these two sources are given below.

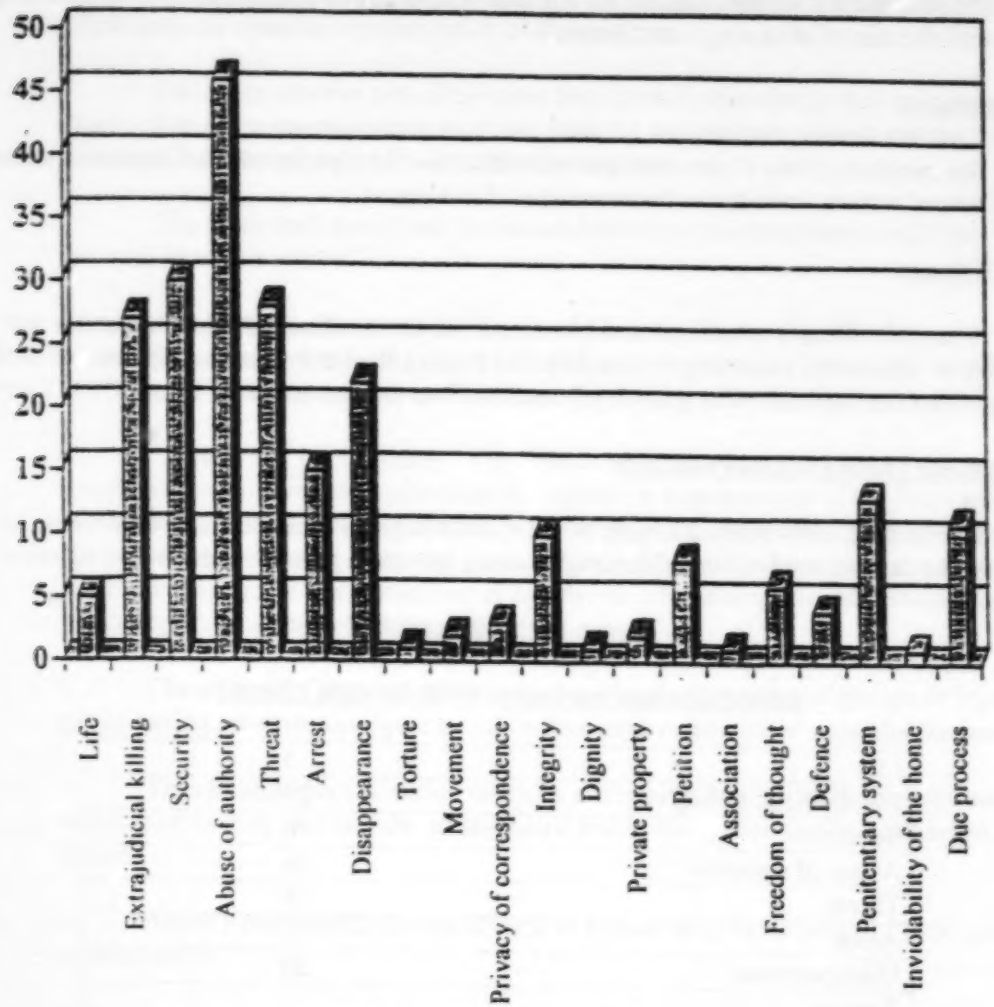
Data from the Human Rights Procurator

14. The detailed 1998 Annual Report of the Human Rights Procurator records one case of torture in the data on resolved individual rights cases, as can be seen from the following table.

Human Rights Procurator

Individual cases resolved in 1998, by right affected

Life	5
Extrajudicial killing	27
Security	30
Abuse of authority	46
Threat	28
Arrest	15
Disappearance	22
Torture	1
Movement	2
Privacy of correspondence	3
Integrity	10
Dignity	1
Private property	2
Petition	8
Association	1
Freedom of thought	6
Defence	4
Penitentiary system	13
Inviolability of the home	1
Due process	11

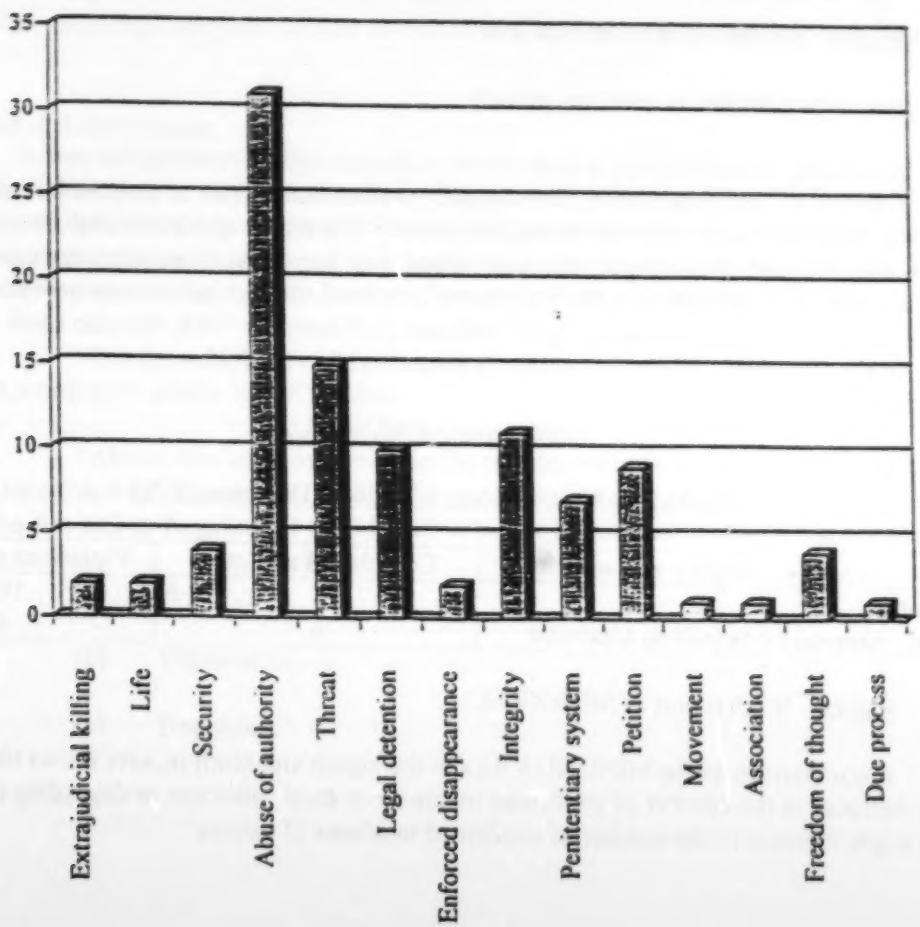


15. The report also shows that, in the area of individual rights, no cases of torture were recorded in 1998, as can be seen from the following table:

Individual rights

Cases recorded in 1998, by right affected

Extrajudicial killing	2
Life	2
Security	4
Abuse of authority	31
Threat	15
Legal detention	10
Enforced disappearance	2
Integrity	11
Penitentiary system	7
Petition	9
Movement	1
Association	1
Freedom of thought	4
Due process	10
Total	109



Data from MINUGUA

16. According to MINUGUA's eighth report on human rights, covering the period from 1 July 1997 to 31 March 1998, seven complaints of torture and five of cruel, inhuman or degrading treatment were recorded during the period. It should be noted that the admission of a complaint by MINUGUA does not imply confirmation of a human rights violation. The report also states that seven violations in respect of torture and 21 in respect of cruel, inhuman or degrading treatment were confirmed during the period. It should also be noted that the violations confirmed include not only cases admitted by MINUGUA between 1 July 1997 and 31 March 1998, but also cases admitted during previous periods. This information is summarized in the following table:

Eighth report of MINUGUA

Human rights violations, 1 July 1997-31 March 1998

Right to personal integrity and security	Complaints admitted	Violations confirmed*
Torture	7	7
Cruel, inhuman or degrading treatment	5	21

Source: Eighth report of MINUGUA.

* Includes cases admitted in previous periods.

17. According to MINUGUA's ninth report on human rights, covering the period from 1 April to 31 December 1998, five complaints of torture and six of cruel, inhuman or degrading treatment were recorded during the period. The report also states that 10 violations in respect of torture and six in respect of cruel, inhuman or degrading treatment were confirmed during the period. It should be noted that the violations confirmed include not only cases admitted by MINUGUA between 1 April 1998 and 31 December 1998, but also cases admitted during previous periods. This information is summarized in the following table:

Ninth report of MINUGUA

Human rights violations, 1 April-31 December 1998

Right to personal integrity and security	Complaints admitted	Violations confirmed
Torture	5	10
Cruel, inhuman or degrading treatment	6	6

Source: Ninth report of MINUGUA.

18. A comparison of the MINUGUA data in the eighth and ninth reports shows that there was a decrease in the number of confirmed incidents of cruel, inhuman or degrading treatment and a slight increase in the number of confirmed incidents of torture.

19. As of the date of this report, MINUGUA had not yet published its tenth report, which will cover the period between 1 January and 31 October 1999.

Article 3. Measures relating to expulsion, extradition of persons at risk, and monitoring of human rights violations by another State

Extradition

20. According to article 27 of Guatemala's Constitution:

> "Guatemala recognizes the right of asylum and grants it in accordance with international practice. Extradition shall be governed by the provisions of international treaties. The extradition of Guatemalans shall not be sought for political offences and Guatemalans may in no circumstances be handed over to a foreign government, save as provided in treaties and conventions relating to crimes against humanity or violations of international law.
>
> No political refugee shall be expelled from the national territory to the country persecuting him."

21. The authority competent to rule on extradition in Guatemala is the Supreme Court of Justice.

Expulsion and deportation

22. A new Migration Act was adopted by Congress in November 1998, by Decree No. 95-98, with the aim of harmonizing and modernizing legal procedures relating to migration and fully regulating entry into, residence in and exit from the country for both nationals and aliens, so as to allow the enjoyment of the right to freedom of movement for all, subject to the limitations of the law.

23. According to article 109 of the Act:

> "Aliens who enter or remain in the country without authorization from the Department of Migration or without having complied with the requirements laid down in the Act and its Regulations shall be liable to one or more of the following penalties:
>
> (a) A fine;
>
> (b) Deportation;
>
> (c) Expulsion."

24. According to article 113:

"Before deporting an alien for the offences defined in the preceding article, the Department of Migration shall observe the following procedure:

(1) Grant the party concerned a hearing within a maximum period of 10 days;

(2) Receive the proposed evidence within a maximum of five days of its being proposed; and

(3) Resolve the situation within a maximum of 72 hours of the holding of the hearing or receipt of the evidence.

Exculpatory evidence shall be admitted in accordance with the provisions of the Code of Civil and Commercial Procedure."

25. With regard to deportation, article 98 of the Regulations of the Migration Act (Government Order No. 529-99 of 20 July 1999) provides that:

"The Department of Migration, through the Migration Control Branch, shall deport persons pursuant to a court order, which shall be stamped in the passport at the time it is served. If the person does not leave the country or apply for the relevant remedies within the time allowed, he shall be expelled."

26. As to expulsion, the Regulations of the Migration Act stipulate:

"Article 97. Expulsion: The procedure of expulsion may be applied to anyone violating this Act or its Regulations. To that end, the Director of the Migration Control Branch of the Department of Migration shall prepare an expulsion order and request National Civil Police custody for transfer to the port of entry or the most appropriate point for transfer to the country of origin. For documentation of such an individual, application for identification may be made to his country's accredited diplomatic mission in Guatemala or the Department of Migration may authorize a special exit pass, depending on the identity documents he carries or the statement he makes.

A false statement made by an alien in order to obtain a tourist or residence permit or a visa may be grounds for expulsion.

If residence by an alien is contrary to the country's interests, the maintenance of law and order or State security, he shall be expelled."

27. With regard to remedies in matters of migration, article 116 of the Migration Act stipulates: "The Administrative Challenge Act may be invoked against decisions in matters of migration". This Act establishes two remedies that may be used to challenge decisions by the public administration: the remedy of review and the remedy of reconsideration.

Article 4. Ensuring that all acts of torture are offences under national law

28. As indicated above, article 201 bis of the Penal Code defines the offence of torture. As described in part II of this report, the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) prepared a draft amendment to article 201 bis of the Penal Code, which was transmitted to the Office of the Private Secretary to the President of the Republic for consideration and submission to the Congress of the Republic, as a bill proposed by the Executive. This bill is currently under consideration in the Office of the Private Secretary to the President of the Republic (a copy of the proposal is contained in the annexes to this report).

29. According to the Department of Statistics of the Judiciary, no sentences were handed down in 1998 for the offence of torture as provided for in article 201 bis of the Penal Code.

30. In connection with this article of the Convention, account should also be taken of the above-mentioned article 425 of the Penal Code (Abuses against individuals).

Article 5. Jurisdiction over offences of torture

31. With regard to this article of the Convention, it may be noted that article 5 of the Judiciary Act reads:

> "Scope of the Act. The rule of law shall apply to all individuals, whether nationals or foreigners, in residence or in transit, subject to the provisions of international law accepted by Guatemala, and to the entire territory of the Republic, which includes the soil, the subsoil, territorial waters, the continental shelf, the economic zone and airspace, as defined by its laws and by international law."

32. The Penal Code establishes the following regulations which are applicable to the offence of torture under article 201 bis of the Code:

> "Article 4. Territoriality of criminal law. Except as provided for in international treaties, this Code shall apply to any person who commits an offence or misdemeanour in the territory of the Republic or in places or vehicles subject to its jurisdiction.
>
> Article 5. Extraterritoriality of criminal law. This Code also applies:
>
> 1. To an offence committed abroad by an official in the service of the Republic, if not judged in the country in which it was committed. 2. To an offence committed on a Guatemalan vessel, aircraft or any other means of transport, if not judged in the country in which it was committed. 3. To an offence committed by a Guatemalan abroad, when his extradition has been refused. 4. To an offence committed abroad against a Guatemalan, if not judged in the country in which it was committed, provided that a charge has been brought by the plaintiff or by the Public Prosecutor's Office and the accused is in

Guatemala. 5. To an offence which, under a treaty or convention, must be punished in Guatemala, even if not committed in that country's territory. ... In other cases, if a sentence is handed down, the least stringent law shall be applied. The foreign sentence shall have the effect of res judicata."

Article 6. Arrest of a person alleged to have committed torture

33. In connection with this article, account should be taken of the provisions of the Penal Code reproduced in relation to article 5.

34. It should also be mentioned that, in the case of the situations referred to in article 6 of the Convention, the Guatemalan authorities would apply the terms of articles 6 and 7 of the Constitution, which state:

"Article 6. No one may be arrested or imprisoned except for a crime or misdemeanour and by virtue of an order issued pursuant to the law by a competent judicial authority. Cases of in flagrante offences or misdemeanours are excepted. Persons arrested shall be placed at the disposal of the competent judicial authority within a period of not more than six hours and may not be made subject to any other authority. An official or employee of the public authorities who infringes the provisions of this article shall be punished in accordance with the law and the courts shall officially institute the appropriate proceedings.

Article 7. Notification of the grounds for arrest. Every person who is arrested shall be notified immediately, both orally and in writing, of the grounds for his arrest, the authority which ordered the arrest and the place in which he is to be held. This notification shall also be given by the most rapid means possible to the person whom the detainee designates and the authority shall be responsible for giving effect to the notification."

35. In the case of the situations referred to in article 6, the authority competent to make the arrests would be the National Civil Police, as in the case of any other offence, in accordance with the provisions of article 10 of Congress Decree No. 11-97 (National Civil Police Act): "The National Police shall exercise the following functions. In the performance of its mandate: ... (e) Arrest persons by court order or in cases of flagrante delicto and place them at the disposal of the competent authorities within the legal time limit". The preliminary investigation of the case should be conducted by the Public Prosecutor's Office in accordance with article 46 of the Code of Criminal Procedure, which states: "Through the officials it designates, the Public Prosecutor's Office shall be empowered to conduct investigations into the offences assigned to it by this Code and the courts of first instance shall exercise supervisory jurisdiction. It shall also institute criminal proceedings in accordance with the terms of this Code".

36. Article 309 of the Code of Criminal Procedure states:

"Purpose of the investigation. In its investigation of the truth, the Public Prosecutor's Office shall take all relevant and necessary steps to determine the existence of the act, with all the circumstances of importance for criminal law. It shall further

ascertain who are the perpetrators of the act and establish their identity and the personal circumstances which will be used to assess their responsibility or which will affect their punishability. It shall also ascertain the damage caused by the offence, even if no criminal indemnification proceedings have been brought."

37. As regards the guarantee contained in article 6, paragraph 3, of the Convention, the State of Guatemala is a party to the Vienna Convention on Consular Relations article 36 of which states:

"If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph."

On the basis of the obligation assumed under this article, when a foreigner is arrested by National Civil Police officers, he is informed by them of his right to communicate with the consular authorities of his country of origin.

38. In order to strengthen compliance with this obligation, COPREDEH has designed a leaflet with the information that the National Civil Police must furnish to detainees, specifically concerning the following articles of the Guatemalan Constitution: 7 (Notification of the grounds for arrest), 8 (Rights of arrested persons), 13 (Grounds for ordering imprisonment) and 14 (Presumption of innocence and public nature of court proceedings). An extract from article 36 of the Vienna Convention on Consular Relations is also included. The leaflet was published by COPREDEH with financial support from the European Economic Community. In February this year COPREDEH provided the National Civil Police with 25,000 leaflets (a copy of the leaflet is contained in the annexes to this report).

Article 7. Extradition of a person alleged to have committed torture

39. With regard to paragraphs 1 and 2 of this article of the Convention, reference should be made to articles 4 and 5 of the Code of Criminal Procedure and article 5 of the above-mentioned Judiciary Act.

40. As to paragraph 3 of this article of the Convention, the Constitution states:

"Article 8. Rights of arrested persons. Every person arrested shall be immediately informed of his rights in a manner understandable to him and particularly of the fact that he may be assisted by legal counsel, who may be present during all police and judicial proceedings. An arrested person shall not be obliged to make a statement, except before a competent judicial authority.

Article 12. Right of defence. The defence of the individual and his rights is inviolable. No one may be sentenced or deprived of his rights without having been summoned, heard and convicted in a lawful trial before a competent and pre-established court or tribunal. No one may be tried by special or secret courts or by procedures which are not legally pre-established."

The Code of Criminal Procedure states:

"Article 20. Defence. The defence of the individual and his rights is inviolable in criminal proceedings. No one may be sentenced without having been summoned, heard and convicted under a pre-established procedure and before a competent court in which the formalities and guarantees of the law have been complied with.

Article 21. Equality of persons on trial. Persons on trial shall enjoy the guarantees and rights provided for by the Constitution and the laws, without discrimination."

Article 8. Torture in extradition treaties

41. With regard to extradition, article 344 of the Code of Private International Law, to which the State of Guatemala is a party along with other American States, provides:

"In order to render effective the international judicial competence in penal matters, each of the contracting States shall accede to the request of any of the others for the delivery of persons convicted or accused of crime, if in conformity with the provisions of this title, subject to the dispositions of the international treaties and conventions containing a list of penal infractions which authorize the extradition."

42. Article 345 of the Code states:

"The contracting States are not obliged to hand over their own nationals. The nation which refuses to give up one of its citizens shall try him."

43. Guatemala has signed extradition conventions with a number of countries, including Belgium, the United States, France and Mexico on specific offences, which do not include those referred to in article 4 of the Convention.

44. However, Guatemala is party to the Convention on Extradition signed at the Seventh International Conference of American States in Montevideo, Uruguay, in December 1933. This international instrument does not specify the types of offence to which it applies and may therefore be applied to the offences for which article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides. To date, however, as regards the Convention on Extradition, Guatemala has not acted either as demanding or surrendering State for this type of offence.

45. The Convention on Extradition is in force in the following States, in addition to Guatemala: Argentina, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama and United States.

46. The main articles of this international instrument relating to article 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are reproduced below (the full text of the Con. ention on Extradition is contained in the annexes to this report).

"Article 1. Each one of the signatory States in harmony with the stipulations of the present Convention assumes the obligation of surrendering to any one of the States which may make the requisition the persons who may be in their territory and who are accused or under sentence. This right shall be claimed only under the following circumstances:

(a) That the demanding State have the jurisdiction to try and to punish the delinquency which is attributed to the individual whom it desires to extradite.

(b) That the act for which extradition is sought constitutes a crime and is punishable under the laws of the demanding and surrendering States with a minimum penalty of imprisonment for one year.

Article 2. When the person whose extradition is sought is a citizen of the country to which the requisition is addressed, his delivery may or may not be made, as the legislation or circumstances of the case may, in the judgement of the surrendering State, determine. If the accused is not surrendered, the latter State is obliged to bring action against him for the crime with which he is accused, if such crime meets the conditions established in sub-article (b) of the previous article. The sentence pronounced shall be communicated to the demanding State.

Article 3. Extradition will not be granted:

(a) When, previous to the arrest of the accused person, the penal action or sentence has expired according to the laws of the demanding or the surrendering State.

(b) When the accused has served his sentence in the country where the crime was committed or when he may have been pardoned or granted an amnesty.

(c) When the accused has been or is being tried by the State to which the requisition was directed for the act with which he is charged and on which the petition of extradition is based.

(d) When the accused must appear before any extraordinary tribunal or court of the demanding State. Military courts will not be considered as such tribunals.

(e) When the offence is of a political nature or of a character related thereto. An attempt against the life or person of the Chief of State or members of his family shall not be deemed to be a political offence.

(f) When the offence is purely military or directed against religion.

Article 5. A request for extradition should be formulated by the respective diplomatic representative. When no such representative is available, consular agents may serve, or the governments may communicate directly with one another. The following documents in the language of the country to which the request for extradition is directed shall accompany every such request:

(a) An authentic copy of the sentence, when the accused has been tried and condemned by the courts of the demanding State.

(b) When the person is only under accusation, an authentic copy of the order of detention issued by the competent judge, with a precise description of the imputed offence, a copy of the penal laws applicable thereto, and a copy of the laws referring to the prescription of the action or the penalty.

(c) In the case of an individual under accusation as also of an individual already condemned, there shall be furnished all possible information of a personal character which may help to identify the individual whose extradition is sought.

Article 9. Once a request for extradition in the form indicated in Article 5 has been received, the State from which the extradition is sought will exhaust all necessary measures for the capture of the person whose extradition is requested.

Article 10. The requesting State may ask, by any means of communication, the provisional or preventive detention of a person, if there is, at least, an order by some court for his detention and if the State at the same time offers to request extradition in due course. The State from which the extradition is sought will order the immediate arrest of the accused. If within a maximum period of two months after the requesting State has been notified of the arrest of the person, said State has not formally applied for extradition, the detained person will be set at liberty and his extradition may not again be requested except in the way established by Article 5. The demanding State is exclusively liable for any damages which might arise from the provisional or preventive detention of a person."

Article 9. Assistance in criminal proceedings

47. With regard to paragraph 1 of this article, the Code of Criminal Procedure stipulates: "Article 158. Foreign courts. Requests made to foreign courts or authorities or received from them shall be processed through diplomatic channels, in the form established by international treaties and custom or, in their absence, by the laws of the country."

48. The Code of Private International Law, to which the State of Guatemala is a party along with other American States, stipulates: "Article 388. Every judicial step which a contracting State has to take in another shall be effected by means of letters requisitorial or letters rogatory, transmitted through the diplomatic channel. Nevertheless, the contracting States may agree upon or accept as between themselves any other form of transmission in respect to civil or criminal matters."

49. The relevant statistics do not show that these rules have been applied in connection with the offences for which article 4 of the Convention provides.

50. As to article 9, paragraph 2, of the Convention, it may be noted that a Treaty of Cooperation on Mutual Legal Assistance between the Government of the Republic of Guatemala and the Government of the United States of Mexico was signed in February 1996; it determines which assistance these States should provide to each other when one of them so requests and could therefore be applied to the offences for which article 4 of the Convention provides. To date, however, there is no record that the Treaty has been applied to such offences.

51. Two paragraphs of article 1 of the Treaty, which are considered to be significant in this regard, are reproduced below:

> "Article 1: Scope of the Treaty
>
> 1. The parties shall cooperate with each other by taking all appropriate measures legally available to them for the provision of mutual assistance in criminal matters, in accordance with the terms of this Treaty and within the limits of the provisions of their respective domestic legislation. The purpose of such assistance shall be to prevent, investigate and prosecute offences and to institute any other criminal proceedings arising out of acts which come within the competence or jurisdiction of the requesting party at the time when the assistance is requested and in relation to related proceedings of any other kind in respect of the criminal conduct in question.
>
> 2. For the purposes of paragraph 1, 'criminal matters' shall mean for the Parties, any investigation and procedure relating to offences defined in accordance with State or domestic laws" (the full text of the Treaty is contained in the annexes to this report).

52. It is also important to note that Guatemala is a member of the International Criminal Police Organization (INTERPOL), which is a channel of communication between the police forces of its member countries (over 155) and whose aims are, according to article 2 of its Constitution:

> "(a) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the 'Universal Declaration of Human Rights'; and
>
> (b) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes."

53. As a member of INTERPOL since 1949, Guatemala has, through the National Central INTERPOL Office, played a key role in the international crime prevention system, which has involved:

Centralizing information on crime of international concern and transmitting the documentation it has collected to other INTERPOL Offices;
Ensuring that police operations and action requested by other member States through their Central Offices are carried out in its territory;

Transmitting requests submitted by the courts to other National Central INTERPOL Offices for compliance abroad.

Article 10. Education on the prohibition of torture in the training of law enforcement personnel

54. The penitentiary system in Guatemala is the responsibility of the Office of the Director-General of the Penitentiary System, which is a department of the Ministry of the Interior.

55. At present, this system still has a number of defects. In 1996, the non-governmental organization Guatemalan Institute of Comparative Studies in Criminal Sciences prepared a study for MINUGUA entitled "Diagnóstico del Sistema Penitenciario" (Diagnosis of the penitentiary system). Another study entitled "El Problema de la Situación Preventiva en Guatemala" (The problem of pre-trial detention in Guatemala) was prepared in 1997. Both documents state that the Guatemalan penitentiary system's main problems are physical infrastructure and administrative functions involving procedures relating to the treatment, separation and care of prisoners.

56. The Government of Guatemala has planned to invest 48 million quetzales (US$ 6,022,585) in the construction of 12 prisons in 12 departments at a cost of 4 million quetzales (US$ 50,882.06) each. Progress has been made in designing and drawing up the plans for these small prisons, together with studies for maximum security prisons, one of which has been in operation in the Department of Escuintla since the second quarter of 1999.

57. The national authorities are aware of the need for the adoption of a new penitentiary system act to bring about substantive structural changes. The Ministry of the Interior set up a special commission composed of two representatives of the Ministry of the Interior, enforcement judges, prosecutors, a representative of MINUGUA and the Prisons Department in order to draft a bill which would include proposals for the full restructuring of the present system, taking into account its real needs. The draft is currently under study by the Congressional Interior Commission prior to being submitted to the plenary of Congress in the form of a bill.

58. MINUGUA began the project on the improvement of the penitentiary system in July 1998; the aim is to change the system as a whole, on the basis of the formulation and adoption of a prisons policy which respects the dignity of persons deprived of their liberty and includes statutory reform and a human resources development plan.

59. In the context of this project, the following training was given in 1998:

Training course for senior officials of the penitentiary system;

Training course for security system managers in the penitentiary system.

The courses covered the following topics: ethics and human rights; history of punishment; prison legislation; national and international protection of human rights; criminology; prison studies; and prison security.

60. As a result of these courses, all centres for the execution of sentences and three pre-trial detention centres (Santa Teresa, Zone 18 Pre-Trial Detention Centre and Fraijanes Pre-Trial Detention Centre) are in the hands of persons with proper training in prisoners' rights.

61. A training course for new prison guards was held in April 1999 with the participation of 115 persons currently working in prisons. The course attached particular importance to respect for the human rights of prisoners.

62. Work was done in 1998 on setting up the Penitentiary System College with the support of MINUGUA's improvement of the penitentiary system project for the main purpose of providing efficient and adequate professional training for prison staff. The first group of staff of the Prison Studies College was established on 10 June 1999, and composed of 26 well-known Guatemalan professionals in the field. This first group prepared the methodology, curriculum and legal status proposed for the College.

63. The College began its activities on 17 November 1999 and in accordance with the initial guidelines, is the training centre for prison staff, with training based on full respect for human rights. The inaugural course on "Health in prisons", which was held from 17 to 19 November 1999 for doctors, nurses, social workers and administrative staff in the Guatemalan penitentiary system, dealt with the topic of health care for male and female prisoners; it proposed that a new model of health care needed to be designed and that health in prisons should be regarded as a public health problem. Steps are currently being taken to make the College the information focal point for institutions, organizations and persons interested in the subject. Its establishment meets the need to ensure that prison staff is involved and kept up to date, as well as the training and information needs of interest groups, such as non-governmental organizations and others; it will also promote research and the dissemination of information on criminological, prison, penological and related topics.

64. Also in connection with staff training, discussions were held, on the initiative of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH), with officials of the penitentiary system in July 1998 to plan a training programme for prison guards which would cover international United Nations instruments on the treatment of prisoners, the Code of Conduct for Law Enforcement Officials and other international human rights instruments.

65. It should be pointed out that, in the National Civil Police Academy, the basic human rights course uses the text "A basic human rights course, a handbook for police officers".

Part III (Ethical and lawful police conduct), chapter 1 (Code of Conduct for Law Enforcement Officials), of this text, which was published by MINUGUA and the Human Rights Procurator, explains the Code's police policy of completely prohibiting torture, ill-treatment and cruel, inhuman or degrading punishment. It also refers to the provisions on torture found in the International Covenant on Civil and Political Rights and the American Convention on Human Rights. It places particular emphasis on specific international instruments on the subject, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture. It also deals with the provisions of the Constitution relating to the protection of physical integrity and the articles of the Penal Code on torture (a copy of the text is contained in the annexes to this report).

66. It may be noted that the rules of the Guatemalan Police are distributed to all students in the National Civil Police Academy; volume II contains the main national and international standards for the protection of human rights, including the prohibition of torture.

67. In order to enable public officials and the public in general to know about international rules on the rights of prisoners, COPREDEH has published a document on human rights instruments in the administration of justice with the support of the European Union. This document includes, inter alia, such instruments as: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the United Nations Standard Minimum Rules for Non-custodial Measures; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty; the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Independence of the Judiciary; the Basic Principles on the Role of Lawyers; and the Safeguards guaranteeing protection of the rights of those facing the death penalty. Ten thousand copies of this document were published and circulated to officials of the judiciary, the Public Prosecutor's Office, the Office of the Director-General of the Prison System, the Public Criminal Defence Institute, the Ministry of the Interior, Guatemalan universities and non-governmental organizations (a copy of this publication is contained in the annexes to this report).

Article 11. Review of interrogation rules, instructions, methods and practices and of arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment

68. The Constitution provides as follows:

"Article 19. The penitentiary system. The penitentiary system must aim at the social rehabilitation and reformation of prisoners and the following minimum rules must be observed in their treatment:

(a) Prisoners must be treated as human beings; they must not be discriminated against on any grounds and they may not be subjected to cruel treatment, physical, moral or psychological torture, coercion or harassment, labour incompatible with their physical condition or treatment impairing their dignity. Nor may they be subjected to extortion or scientific experiments;

(b) They must serve their sentences in places intended for this purpose. Penal institutions shall be civilian in character and staffed by specialized personnel; and

(c) Prisoners shall have the right to communicate, on request, with their relatives, their defence counsel, a chaplain or doctor and, where appropriate, with the diplomatic or consular representative of their country.

Failure to observe any of the rules laid down in this article shall give a prisoner the right to claim compensation from the State for any damage caused and the Supreme Court of Justice shall order his immediate protection.

The State shall create and foster conditions for full compliance with the provisions of this article."

69. Guatemala has different detention centres for those awaiting trial and those who have been convicted. There are four men's penitentiaries and one women's penitentiary. The men's penitentiaries are Granjas Penales de Pavón, in Guatemala department; Granja Penal Cantel, in Quetzaltenango department; Granja Penal Canadá, in Escuintla department; and the Puerto Barrios departmental prison. The one for women is the Women's Orientation Centre (COF). There are also 30 centres for pre-trial detention (for those awaiting trial), spread through all 22 departments.

70. Although the provision regarding separation of prisoners awaiting trial and convicted prisoners is observed in most cases, exceptions are made for reasons of space and the infrastructure of the centres. For example, although the Zone 18 Pre-Trial Detention Centre in Guatemala City is intended to hold persons awaiting trial, it also has a separate section for prisoners serving sentences. El Progreso, Cobán, Mazatenango, Petén and Retalhuleu prisons, which are for those awaiting trial, also hold prisoners serving sentences, who are not kept separate from those awaiting trial. The reason for this is that there is no room for them in the penitentiaries. As of 10 November 1999, Puerto Barrios, which is intended for those serving sentences, held a total of 30 prisoners awaiting trial, in this case because the pre-trial detention centre had been destroyed by an earthquake that hit the department in mid-1999.

71. The pre-trial detention centres also hold persons serving light imprisonment for petty offences. Light imprisonment involves deprivation of liberty for up to 60 days and, under the provisions of article 46 of the Penal Code, must be served in places other than those intended for the serving of prison sentences.

72. As of 20 November 1999, Guatemala's detention centres held in all: 2,535 male convicts (serving prison terms), 5,087 men in pre-trial detention (awaiting trial) and 318 men serving light imprisonment for petty offences. By comparison, there were 161 female convicts (serving prison terms), 348 women in pre-trial detention (awaiting trial) and 11 serving light imprisonment for petty offences.

73. The table below shows the situation in pre-trial detention centres and penitentiaries. It also includes the information given above and highlights the overcrowding problem in some establishments.

Total number of inmates in penitentiaries and pre-trial detention centres in Guatemala

As of 20 November 1999

Detention centre	Men Convicted prisoners	Men Pre-trial detention	Men Light imprisonment for petty offences	Women Convicted prisoners	Women Pre-trial detention	Women Light imprisonment for petty offences	Total per centre	Capacity per centre
Granja Pavón	1 254	0	0	0	0	0	1 254	1 144-M
Granja Cantel	540	70	0	0	0	0	610	800-M
Granja Canadá	443	352	0	0	19	0	814	800-M
Escuintla Prison	0	78	0	0	0	0	78	100-M
Zone 18 Pre-trial	88	1 468	164	0	0	0	1 720	1 000-M
Fraijanes Pre-trial	0	1 021	0	0	0	0	1 021	1 440-M
Women's Orientation Centre	0	0	0	132	0	0	132	130-W
Santa Teresa	0	0	0	26	210	7	243	500-W
El Progreso	3	102	7	0	0	0	112	100
Antigua Guatemala	0	83	0	0	3	0	86	90
Chimaltenango	0	79	0	0	7	0	86	90
Mazatenango	9	121	38	0	9	1	178	200
Cobán	17	206	52	0	8	0	283	200
Zacapa	0	198	0	0	4	0	202	150-M
Puerto Barrios	161	34	0	2	9	0	206	250-M
Sta. Elena Petén	12	138	37	0	10	0	197	150
Totonicapán	0	35	0	0	4	0	39	80-M
Sololá	0	82	0	0	1	0	83	20-W 30-M
Retalhuleu	8	44	20	1	3	3	79	06 W 66-M
San Marcos	0	92	0	0	12	0	104	30-W 150-M
Sta. Cruz Quiché	0	98	0	0	0	0	98	30-W 60-M
Cuilapa	0	25	0	0	0	0	25	40-W 40-M
Salamá	0	65	0	0	0	0	65	10-W 30-M
								00-W

Detention centre	Men Convicted prisoners	Men Pre-trial detention	Men Light imprisonment for petty offences	Women Convicted prisoners	Women Pre-trial detention	Women Light imprisonment for petty offences	Total per centre	Capacity per centre
Jalapa	0	74	0	0	17	0	91	50-M 20-W
Jutiapa	0	137	0	0	0	0	137	50-M 00-W
Chiquimula	0	94	0	0	3	0	97	25-M 10-W
Quetzaltenango	0	68	0	0	12	0	80	200-M 60-W
Coatepeque	0	130	0	0	7	0	137	30-M 20-W
Huehuetenango	0	152	0	0	10	0	162	100-M 07-W
Nabaj	0	19	0	0	0	0	19	10-W 00-W
Sacapulas	0	5	0	0	0	0	5	10-M 00-W
Chichicastenango	0	6	0	0	0	0	6	10-M 00-W
Chajul	0	1	0	0	0	0	1	10-M 00-W
Cotzal	0	1	0	0	0	0	1	10-M 00-W
Tiquistate	0	9	0	0	0	0	9	15-M 00-W
Subtotal	2 535	5 087	318	161	348	11		
Overall total							8 460	

Source: Penitentiary System Department.

74. The Regulations for Detention Centres of the Republic of Guatemala were approved by Government Order No. 975-84 of 14 November 1984. They contain three chapters:

Chapter 1: General provisions;

Chapter 2: Powers of the authorities in each Centre; and

Chapter 3: Standards of treatment.

Chapter 3 sets forth the rules governing communication with those awaiting trial, the most important of which are as follows:

"Article 23. Inmates may receive visits from their families, friends and other authorized persons. The regime of relations with the outside shall be supervised by the Prison Director.

Article 24. Visitors may be received only and exclusively at the times set by these Regulations and in the places designated for visits and never in dormitories or cells.

Article 25. Visits may be made on Wednesdays and Sundays each week, for four hours on each of those days and as provided by the Prisons Department.

Article 26. Exceptionally, visits may be granted outside the regulation days and times, if warranted by special circumstances in the opinion of the Prison Director.

Paragraph VI.

Article 27. At any time after admission, any detainee may immediately inform the lawyer of his choice and his family members that he has been detained and reasonable facilities shall be provided to communicate with them and to receive visits within the limits dictated by security considerations, court procedure and the rules of the establishment. Both convicts and those in pre-trial detention shall be supervised during visits, but their conversations may not be listened to by any police or prison employee or official.

Article 28. Correspondence shall be delivered, after checking to those in pre-trial detention, except when the senior prison authorities order that it shall not be delivered to the addressee for security reasons. Communication by telephone shall be permitted only in case of urgent need, at the discretion of the Director of the establishment.

Article 34. Anyone in pre-trial detention shall have the right to inform his family or any other person if he is transferred to another establishment.

Article 35. Inmates shall have the right to speak to officials of the Centre and to transmit complaints or petitions of a moderate and respectful nature to outside authorities and/or present them in person to officials visiting the establishments in an official capacity."

75. With regard to the treatment of those awaiting trial, the Regulations stipulate as follows:

"Article 45. The use of any punishment that constitutes degrading treatment, as well as the unnecessary use of violence against inmates, is prohibited.

Article 46. No more force shall be used against inmates than is necessary to deal with disobedience or resistance to lawful order. Prison guards who resort to force shall endeavour to use it only as strictly and reasonably necessary and must immediately inform the Director of the establishment that they have done so."

76. In both pre-trial detention centres and penitentiaries, lawyers are permitted to visit inmates at any time of the day or night.

77. It should be noted that the Regulations referred to above also apply to prisoners serving a sentence. Moreover, in penitentiaries, prisoners are often allowed visitors on other days than Wednesdays and Sundays and for longer periods. Weekly conjugal visits are the norm in such centres.

78. Violations of these Regulations and the disciplinary sanctions to be imposed on detainees are dealt with in articles 42, 43 and 44 of the Regulations, the text of which is annexed to this report.

79. The Office of the Ombudsman for Prisoners and Due Process, part of the Office of the Human Rights Procurator, began its work on 16 March 1998. The Office's main task is to deal with cases of violations of prisoners' human rights, either at the prisoner's own request or at the request of a member of the family, or of its own motion if circumstances or the seriousness of a case warrant it. The Office of the Ombudsman has the following functions:

(a) To protect the human rights of persons awaiting criminal trial or currently serving a sentence in any penitentiary establishment in Guatemala, by investigating complaints of violations of those rights and referring them to the appropriate instances;

(b) To ensure that the competent judicial and prison authorities comply with the laws, regulations and legal instruments signed and ratified by Guatemala in respect of prisoners' human rights by promoting those rights and monitoring and reporting any violations thereof;

(c) To liaise with public and private national and international institutions concerned with or having an interest in the protection and promotion of those rights or training or complaints concerning those rights;

(d) To publicize and promote respect for the rights that directly affect Guatemala's prison population;

(e) To engage in preventive and defensive action with regard to specific aspects of the situation of prisoners in Guatemala;

(f) To carry out activities aimed at sensitizing the general public so as to ensure respect for the interests and rights of these groups and their integration into society;

(g) To organize political action to mediate in conflicts arising between the authorities and groups of prisoners, or at prisoners' request.

80. Between 1 January and 20 September 1999, the Office of the Ombudsman dealt with 20 complaints regarding prisoners' rights and handed down judgements in 15 of those cases. The judgements include recommendations to the penitentiary system and the judiciary with a view to getting measures adopted on prisoners' behalf.

81. As mentioned above, one of the main problems confronting Guatemala's penitentiary system is the absence of any legislation addressing needs in this area. One measure that has been taken to deal with the current problem is the publication of Ministerial Order No. 268-98 of 31 August 1999, setting up a commission to reform the Guatemalan penitentiary system through administrative restructuring, building projects (a maximum security prison) and the provision of technical equipment and appropriate weaponry for prison guards.

82. The Commission is made up of 10 experts representing various institutions, including the Ministry of the Interior, State and private universities, the judiciary, the Public Prosecutor's Office and the Guatemalan Institute of Comparative Criminal Studies.

83. As regards prison security, during the first quarter of 1999, part of the Granja Penal Canadá, in Escuintla department, south of Guatemala City, was made over into a maximum security unit. It was designed to hold high-risk prisoners and now contains some 100 of these. The unit was divided into four sectors and strategically designed to block any escape attempt, while at the same time providing prisoners with the conditions they need to enable them to serve their sentence in an atmosphere of respect for human dignity. One hundred prison warders have been assigned to guard the unit. All the prisoners in this unit have individual cells and are kept under observation by a high security closed-circuit video system allowing their activities inside to be monitored.

84. There are plans to build two further maximum security units in the grounds of the Granja Penal de Pavón, in the municipality of Fraijanes, 20 kilometres from the capital, to which prisoners will be relocated. It is hoped by this means to make space available exclusively for pre-trial detention. Fifteen million quetzals (US$ 1,925,545.60) are available for this project, a sum that will provide places for some 400 prisoners. The aim is to design the buildings in such a way that they will not take up large tracts of land, yet will not be overcrowded.

85. As regards the social rehabilitation and reform of prisoners who are serving sentences, all penitentiaries are provided with primary-level schools with teachers appointed either by the Ministry of Education or by the Ministry of the Interior. The timetable provides for an average of roughly four hours' teaching per day. In Pavón and Cantel prisons, secondary education is also provided. In addition, adult literacy programmes are provided by the National

Anti-Illiteracy Committee (CONALFA). Courses in dressmaking, hairdressing, recycling and beauty treatment are also given by the Technical Institute of Vocational Training (INTECAP). The Family Welfare Association (APROFAM) gives courses on contraceptive methods and the prevention of sexually transmitted diseases. All three of these institutions issue certificates and diplomas to those prisoners who follow the course through to the end and this motivates them to make a sustained effort. The Psychology School and the School of Social Work of the University of San Carlos of Guatemala also work with these centres, producing and presenting plays, counselling prisoners and giving courses on interpersonal relationships, dealing with emotions, living in the community, emotional health, mental health, sexuality and venereal diseases.

86. In penitentiaries, prisoners also engage in productive work in crafts, agriculture and clothes-making. Their products are regularly sold to their visitors and, in some cases, the centres arrange for the products to be marketed. Prisoners are contracted by private companies to make clothes.

87. Medical care is available to prisoners in all penitentiaries and most pre-trial detention centres and is provided by doctors and male and female nurses who are in regular attendance at the centres. Dental care is provided in some penitentiaries, such as Granja Penal Canadá, Granja Penal Pavón and the Women's Orientation Centre, and in some pre-trial detention centres.

Article 12. Each State Party shall ensure prompt and impartial investigation whenever it is informed of an act of torture within its jurisdiction

88. According to article 24 of the Code of Criminal Procedure:

> "Public right of action (official). Criminal proceedings are the responsibility of the Public Prosecutor's Office. Without prejudice to the victim's right to act, as provided for by this Code, all offences shall be publicly actionable except the following:
>
> (1) Offences prosecutable on application;
>
> (2) Offences that are prosecutable only by private action or with State authorization."

89. The offence of torture defined in article 201 bis of the Penal Code is publicly actionable, that is to say that it must be automatically investigated by the Public Prosecutor's Office even if no complaint is filed by the victim or the victim's relatives or legal representatives.

90. The body responsible for investigations, prosecutions and criminal charges, the Public Prosecutor's Office, is organized into various departments, in order to carry out its functions as defined in domestic law. It has taken a series of measures to enhance the efficiency of investigations into criminal offences, as described above in the section on article 2 of the Convention.

91. Article 40 of the Public Prosecutor's Office (Organization) Act (Congressional Decree No. 40-90) created the Criminal Investigation Department, which is directly responsible to the

Attorney-General and is in charge of the analysis and examination of proof and other evidence that may help in resolving the criminal cases under investigation. It operates under the supervision of the investigating prosecutor.

Article 13. Each State party shall ensure that victims of the offence of torture are free to complain and shall protect the victim against ill-treatment or intimidation as a consequence of that complaint

92. Article 29 of the Constitution states:

"Free access to the courts and to agencies of the State. Everyone shall have free access to the courts, agencies and offices of the State for the purpose of bringing actions and exercising his rights in accordance with the law.

Aliens may have recourse to the diplomatic channel only in the case of a denial of justice.

The mere fact of a decision being contrary to their interests shall not be deemed a denial of justice and they must, in any event, have exhausted the legal remedies provided under Guatemalan law."

93. The Code of Criminal Procedure also establishes every citizen's right to bring a complaint against the competent authorities, under the following article:

"Article 297. Complaints. Any individual shall communicate, in writing or orally, to the police, the Public Prosecutor's Office or a court, any information he has concerning the commission of a publicly actionable offence. The informant shall be identified. Where required, the application, complaint or authorization shall also be received."

94. The Code of Criminal Procedure also establishes that certain persons have a duty to report publicly actionable offences:

"Article 298. Reporting obligation. The following have a duty to report without delay any information they may have concerning a publicly actionable offence, except for offences where an application, complaint or authorization is required for prosecution:

(1) Public officials and employees who are apprised of such an act in the course of their duties, except if they are bound to observe professional secrecy;

(2) Professionals who are apprised of such an act in the course of their work or duties, in the case of offences against the life or physical integrity of individuals, except if they are bound by professional secrecy; and

(3) Persons who, under the law, by order of the authorities or by judicial act are responsible for the management, administration, care or control of the assets or interests

of an institution, body or person, in the case of offences committed against them or against the property or estate under their charge or control, provided that they are apprised of the offence in the course of their duties.

In all these cases, there shall be no reporting obligation if the person or his spouse, parents, children, siblings or consensual partner themselves run a reasonable risk of being prosecuted."

95. As regards the victim, article 117 of the Code of Criminal Procedure states:

"Victim. This Code defines as a victim:

(1) The direct victim of the offence;

(2) The victim's spouse, parents or children or consensual partner at the time the offence is committed;

(3) The representatives of any society in the case of offences committed against that society, and the members of the society in the case of offences committed by its directors, administrators or controllers; and

(4) Associations, in the case of offences against collective or broad interests, provided that the aims of the association are directly related to those interests."

96. The Code also states:

"Article 116. Joint actions. In the case of publicly actionable offences, an injured party having civil capacity, or his representative or guardian where he lacks capacity, may institute criminal proceedings or join an action already initiated by the Public Prosecutor's Office. The same right may be exercised by any citizen or association of citizens against public officials or employees who have directly violated human rights in the exercise of their functions or on the occasion thereof, as well as in the case of offences committed by public officials who abuse their office.

Organs of the State may bring an action only through the Public Prosecutor's Office. Autonomous bodies with legal personality are excepted from this rule."

97. Any person with knowledge of human rights violations may report it to the Office of the Human Rights Procurator. In that regard, article 13 of the Human Rights (Congressional Commission and Procurator) Act states:

"Powers. The basic powers of the Procurator are:

(a) To promote the smooth operation and timeliness of government administrative action on human rights;

(b) To investigate and proceed in cases of administrative action that is harmful to the interests of individuals;

(c) To investigate complaints of all kinds brought by any individual concerning human rights violations;

(d) To recommend, either privately or publicly, that officials should amend an administrative action that is the subject of a complaint;

(e) To issue public reprimands for acts or conduct that violate institutional rights;

(f) To promote judicial or administrative proceedings or appeals, where appropriate; and

(g) Any other functions or powers assigned by law."

98. As regards other powers of the Procurator, article 14 (f) of the Act states: "Other powers. To receive, consider and investigate any complaint concerning human rights violations, submitted by any group, individual or corporate person orally or in writing."

Protection of victims

99. The Public Prosecutor's Office is currently developing a programme for the protection of witnesses and other parties, the aim of which is to provide protection to officials and employees of the judiciary, civil security forces and the Public Prosecutor's Office and to witnesses, expert witnesses, consultants, joint plaintiffs and other persons who are at risk as a result of their involvement in criminal proceedings. The protection service includes:

Protection for the person concerned, provided by security staff from the Public Prosecutor's Office or a private executive security services agency;

Change of residence for the person concerned, including housing, transport and subsistence expenses;

Protection by security staff at the person's home and/or workplace;

Change of identity;

Other.

Article 14. Each State Party undertakes to compensate the victims of the offence of torture

100. With regard to compensation for acts committed by public officials, article 155 of the Constitution stipulates:

"Responsibility for violation of the law. When in the exercise of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State or the State institution in which he serves shall be jointly liable for the damage or injury caused.

The civil liability of public officials and employees may be claimed as long as it has not been terminated by the statute of limitations, for which the period shall be 20 years.

In this case, criminal responsibility is extinguished at the end of twice the period specified by the statute of limitations relating to punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances."

101. On the same subject, the Code of Criminal Procedure states:

"Article 124. Subordinate nature and exceptions. In criminal proceedings, action for compensation can be brought only while the criminal proceedings are pending. If the criminal proceedings are suspended, the action for compensation shall also be suspended until the resumption of the criminal proceedings, without prejudice to the right of a party to bring a civil suit before the competent courts.

Nevertheless, following the deliberations, a judgement acquitting the accused or accepting grounds for dismissal of the criminal proceedings shall also resolve any valid civil case.

Article 134. Powers. A civil party shall participate in proceedings only in respect of his civil interest. His statement shall do no more than give an account of the event, its attribution to the party he considers liable, its connection with any civilly liable third party and the existence and extent of any damage or injury.

Participation as a civil party does not in itself exempt that party from the obligation to give evidence."

102. In addition, the Comprehensive Agreement on Human Rights, which is part of the Agreement on a Firm and Lasting Peace, signed on 29 December 1996, establishes the duty to compensate and/or assist victims of human rights violations, as follows:

"The Parties recognize that it is a humanitarian duty to compensate and/or assist victims of human rights violations. Said compensation and/or assistance shall be effected by means of government measures and programmes of a civilian and socio-economic nature addressed, as a matter of priority, to those whose need is greatest, given their economic and social position."

103. Article 9 of congressional Decree No. 145-96 (National Reconciliation Act) stipulates:

"The State shall, as a matter of humanitarian duty, assist the victims of human rights violations perpetrated during the armed internal conflict. Such assistance shall be coordinated by the Peace Secretariat, applying government measures and programmes of

a civil or socio-economic nature and targeting as a matter of priority those most in need in economic and social terms. The Secretariat shall take into account any recommendations made by the Clarification Commission."

104. The report of the Clarification Commission finds that the Guatemalan State has a duty to devise and implement a policy of compensation for victims and their families. Some of the Commission's main recommendations are:

The State should prepare and implement a national compensation programme for the victims of human rights violations and violence in connection with the armed conflict, and their families;

The programme should include individual and collective measures based on the principles of social equity and participation and respect for cultural identity;

The compensation measures should be both individual and collective;

The beneficiaries of the compensation measures should be victims of the violations or members of their families.

105. In order to meet this obligation, the Peace Secretariat of the Office of the President of the Republic is implementing a National Reconciliation Programme, entitled "Peace and Conciliation". At present, an evaluation is being carried out among the hardest-hit communities in those departments that were affected by the armed conflict that wracked the country for some 36 years.

106. According to information provided by the Peace Secretariat, pilot projects are being carried out in the departments of Huehuetenango, Alta Verapaz, Chimaltenango and Quiché and, in that connection, regional offices have been set up to deal with the requests submitted by people from those communities. The projects cover four areas: legal, social, economic, productive and cultural. The methods used are based on dialogue and community participation.

107. The following progress has been made with this programme:

In Alta Verapaz department, the assessment of the selected communities was completed, making it possible to decide which projects the beneficiaries themselves felt they should regard as part of their compensation. Progress has also been made in implementing projects such as mental health care, land measurement and legalization as a means of settling disputes and support for the building of monuments in honour of the victims.

In Huehuetenango, the assessment of the communities has begun and progress has been made in formulating projects.

108. The Guatemalan Government, represented by the Peace Secretariat and the National Fund for Peace (FONAPAZ), has also signed an agreement with the Agency for International Development (AID), setting up a care programme for victims of human rights violations. The programme, which is being implemented in El Quiché and Chimaltenango departments, adopts a

community-based approach and tries to respond to the recommendations of the Clarification Commission. Its aim is to provide care for the victims of human rights violations committed during the armed conflict, particularly those most vulnerable, chiefly widows and orphans. The exhumations in Xolcuay, El Quiché department, took place under this programme and homes for widows and mental health support have been provided in the same department.

109. To date, State statistics indicate no cases of compensation being paid for incidents of torture.

Article 15. Each State party shall ensure that statements made as a result of torture shall not be invoked in proceedings

110. Article 183 of the Code of Criminal Procedure states:

"Inadmissible evidence. To be admissible, any evidence must relate directly or indirectly to the matter under investigation and must help to establish the truth. Courts may restrict the evidence submitted to demonstrate a fact or an event, if there is a large amount of it. Inadmissible evidence includes, in particular, evidence obtained by prohibited means such as torture, invasion of the privacy of the home or residence or of private correspondence, communications, papers or files."

111. In addition, article 85 of the Code states:

"Unlawful methods of obtaining a statement. The accused shall not be placed under oath, but simply warned to speak the truth. He shall not be subjected to any form of coercion, threat or promise, except in the form of warnings as explicitly authorized under criminal or procedural law. No measures shall be used to compel, induce or oblige him to make a statement against his will and no charges or counterclaims shall be brought with the aim of obtaining a confession."

Article 16. Each State undertakes to prevent any cruel treatment or torture

112. Guatemala's legislation does not specifically define cruel, inhuman or degrading treatment as an offence. There are, however, other offences defined in the Penal Code, with penalties for particular acts that affect an individual's physical or mental integrity.

"Article 214. Coercion. Anyone who, without legitimate authorization, uses, or in any way assists someone using, violence or intimidation to compel another person to do or not to do something that is not prohibited by law, to carry out or agree to an action against their will or to allow another person to do so, whether that action is right or not, shall be liable to six months' to two years' imprisonment.

Article 215. Threats. Anyone who threatens to do harm to another person or his relatives as defined by law, whether to their person, honour or property and whether or not that harm constitutes a crime, shall be liable to six months' to three years' imprisonment."

In certain cases a public official may be liable to punishment for such offences.

113. Similarly, chapter II on offences committed by public officials or employees reads as follows:

> "Article 418. Abuse of power. Public officials or employees who, to the detriment of the Government or private individuals, abuse their office or responsibilities by ordering or committing any arbitrary or unlawful act not specifically covered by the (Penal) Code shall be liable to one to three years' imprisonment."
>
> Article 425. Abuse of authority. Any public official or employee who orders undue coercion, torture, degrading punishment, harassment or measures not authorized by law against a prisoner or detainee shall be liable to two to five years' imprisonment and general disqualification. Any person who carries out such orders shall be liable to the same penalty."

II. INFORMATION CONCERNING THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE AGAINST TORTURE

A. Investigation of human rights violations

114. Efforts have been geared basically to strengthening two institutions with a key role in this regard: the judiciary and the Public Prosecutor's Office. Details are given below of the main progress made in each case and of the problems that remain to be solved in certain specific areas. A number of court judgements relating to human rights violation cases are also mentioned.

1. The judiciary

115. The modernization and strengthening of Guatemala's justice system are essential first steps in the investigation of the human rights violations that have already occurred. The judiciary therefore set up a commission on the modernization of the judiciary in 1996. The outcome of its work was an analysis of the judiciary and a modernization plan for 1997-2002. The following are some of the chief measures taken on the basis of this plan that can be seen as progress in this area:

Establishment of auxiliary centres for the administration of justice

116. Three auxiliary centres have been set up: one in the capital, one in Quetzaltenango and one in Escuintla. In 1997, the Guatemala City auxiliary centre for the administration of justice registered 44,058 cases relating to civil law, the family, labour, forced labour and child labour; in 1998, the number nearly doubled, with 83,689 cases, or an increase of 90 per cent. The aim of the centres is to prevent direct contact between judiciary staff and lawyers and members of the public in order to reduce corruption and improve the service and record-keeping.

Establishment of the Administrative Centre for the Management of Criminal Cases

117. The Administrative Centre for the Management of Criminal Cases was set up to receive and allocate proceedings for offences for which persons have been detained. The Centre receives suits, complaints, petitions, reports and documentation for lower courts dealing with criminal cases, drugs and environmental offences in the municipality of Guatemala City. It also issues communications such as notices, injunctions, attachments, evictions and other similar court orders.

Establishment of new courts

118. The following courts have been created:

Sixty-two municipal courts in municipalities in the interior;

Four courts of first instance, in Santa Lucia Cotzumalguapa, Escuintla; Malacatán, San Marcos; Villa Nueva, Guatemala; and Poptún, Petén;

Three appeal divisions: one for labour and social security, in Suchitepéquez, one for civil and commercial cases, in Guatemala City and one mixed, in Alta Verapaz;

Five community criminal courts, in San Luis, Petén; San Miguel Ixtahuacán, San Marcos; San Andrés Semetabaj, Sololá; Santa María Chiquimula, Totonicapán; and San Rafael Petzal, Huehuetenango;

Five labour, social security and family courts, in Petén, Quiché, Santa Rosa, Sacatepéquez and Zacapa;

Twelve criminal trial courts: seven in Guatemala department and one each in Sololá, Totonicapán, Jalapa, Sacatepéquez and Baja Verapaz;

Eight juvenile courts, based in Escuintla, Quetzaltenango, Zacapa, Chimaltenango, Jutiapa, Petén, Mixco municipality and Guatemala City;

Three civil and commercial courts in Guatemala City.

Infrastructure

119. Building: once the process of tendering and the hiring of construction companies was complete, building started on the 24 municipal courts in the interior of the country in January 1999. The Chiquimula department court complex is also now open.

120. Remodelling and extension: the remodelling of the Escuintla trial court building has been completed. The construction of the second floor extension of the Puerto Barrios court building has been contracted out and extensions have been made to the Chimaltenango court building.

Improvements in the Interpreting Service

121. An office has been established to coordinate the Interpreting Service and the appointment of new interpreters with technical university training has begun.

Alternative Conflict-Resolution Programme

122. On 25 September 1998, the first pilot mediation and conciliation centre was opened on the first floor of the Guatemala City Court Tower. As of 31 December 1998, the Centre had received 98 cases, of which 29 were mediated with agreement, 17 were still continuing, 8 were mediated without agreement and 44 were not mediated owing to the absence of one of the parties.

Career Judicial Service Act

123. The Career Judicial Service Act was adopted by Decree No. 41-99. The aim and purpose of this Act is to set forth principles, rules and procedures and to establish the bodies necessary for the administration and operation of a career in the judiciary. The system was also established to regulate entry, tenure, promotion, advancement, training, discipline and other activities of judges and magistrates in order to maintain dignity, independence and professional excellence in the exercise of their judicial functions.

Public Criminal Defence Service

124. By Congressional Legislative Decree No. 129-97, the Public Criminal Defence Service became the Public Criminal Defence Institute, with sufficient autonomy to carry out its tasks and guarantee individuals access to justice on an equal footing. The Institute became an autonomous State body in July 1998. As of October 1999, it had 90 public defenders on its staff and 75 legal aid defenders throughout the country. It is currently increasing the number of defenders in order to be able to increase coverage yet further.

Combating corruption

125. The judiciary has taken the following action to combat corruption:

Regionalization of court supervision. Two regional Offices of Court Supervision have been set up in the departmental capitals of Quetzaltenango and Zacapa, with the aim of improving court oversight mechanisms;

Staff purges. In 1998, 55 judiciary and administrative staff were dismissed for involvement in corruption; lighter sanctions were imposed on other workers.

College of Legal Studies

126. Under Supreme Court decision No. 13-98 of 27 May 1998, the regulations of the College of Legal Studies came into force. The new regime establishes the College as the regulatory body for legal training, both initial and in-service, and the body basically responsible for announcing

vacancies and for the objective and impartial selection of new entrants to the judiciary, ensuring that the sole criteria applied are those of merit, ability, interest, participation and the best use of resources.

127. Between October 1997 and October 1998, the College of Legal Studies organized the following training activities for the staff of the judiciary:

Twelve seminars, with 594 participants (main topics: Children and Young Persons Code, judicial challenges, offences against freedom, competence to conduct an inquiry, perpetration and intermediate perpetration in the light of Guatemalan criminal law);

Nineteen courses, with 320 participants (main topics: judicial challenges, evaluating evidence, procedural issues and exceptions, grounds for sentences);

Sixty-nine workshops, with 1,318 participants (main topics: criminal cases involving arrests, amendments to the Code of Criminal Procedure, oral examination in judicial procedure, discretion in family courts, psycho-cultural hearings of defendants, judicial determination of the death penalty, family violence).

128. The following training courses were also organized for candidates for various judges' positions:

One training course for 27 candidates for community judge;

Four training courses for 117 candidates for justice of the peace;

Four training courses for 129 candidates for lower court judge.

New model of management and organization for the judiciary

129. On 22 October 1998, tenders were invited from consultants for the development of a new model of management and organization for the judiciary, which would introduce new forms of organization in the jurisdictional and administrative departments, including the reorganization of the Office of the Judiciary.

130. With a view to enhancing efficiency in the administration of justice, the constitutional contribution to the judiciary's budget has steadily risen, as can be seen from the following tables, which cover the last six years.

Constitutional contribution to the judiciary over the last six years (in quetzals)

Year	Percentage of judiciary's ordinary income *under Constitution article 213*	Constitutional contribution	Increase over previous year
1994	2.2	96 227 000	-
1995	2.2	97 372 300	1 145 200
1996	4.0	259 572 500	162 200 287
1997	4.0	266 133 300	6 560 775
1998	4.9	297 544 800	31 411 548
1999	5.46	366 480 708	68 935 838

Budget allocation to the judiciary over the last six years as a proportion of gross domestic product (GDP) (thousands of quetzals)

Year	GDP	Budget allocation to judiciary	Budget allocation as percentage of GDP
1994	74 669 184.3	96 227.0	0.13
1995	85 156 692.7	97 372.3	0.11
1996	95 495 024.1	259 572.5	0.27
1997	107 873 445.0	266 133.3	0.25
1998	119 393 600.0	297 544.8	0.25
1999	135 444 500.0	366 480.7*	0.27

* US$ 47,982,523.09.

131. Problems still remain to be solved: one of the commitments made under the Peace Accords was constitutional reform, including in the areas of administration of justice and public safety. Proposals were accordingly submitted to Congress for consideration and approved on 16 October 1998. The reforms could not be implemented, however, because they were not approved by the people in the referendum held in March 1999.

132. That presented something of an obstacle to the progress it had been hoped to make in the areas covered by the proposed reforms, notably:

Recognition by the State of the indigenous community's traditional authorities, of the use and development of their customs, traditions and sacred places and, in particular, of "indigenous customary law";

Further and effective strengthening of the independence of the judiciary and the power to hand down judgements;

Improvements in the basic conditions for the administration of justice, including the following main points: prompt and complete administration of justice, in accordance with the principle of equality before the law and having regard to the multi-ethnic, multicultural and multilingual nature of the population; a free and uninterrupted system of justice and independence and impartiality of judges;

Qualifications for magistrates and judges;

Qualifications for Supreme Court judges.

133. The competent authorities are at present considering ways of maintaining progress despite the referendum result. In view of the present political situation in the country, it is to be hoped that the new Government will accept its commitments in this area and provide the political support and impetus needed to complete the work that is still outstanding.

2. Public Prosecutor's Office

134. Among the initiatives taken by the Public Prosecutor's Office in 1998, the project to reorganize the local prosecutors' offices (located in the various departments in the country) stands out. Under this project, 240 new posts have been created for prosecutors' assistants, all local prosecutors' offices are being reorganized and all offices have been equipped with the necessary computer equipment.

135. The reorganization of these offices includes setting up two new units within each of them, a full-time service unit and a victim-care unit, which have been provided with the necessary resources to meet the needs of the various geographical areas covered by each local office. An example is the hiring of interpreters with indigenous languages in those places where it is necessary.

136. The aim of the full-time service unit in each prosecutor's office is to deal efficiently and promptly with people reporting illegal acts, while the aim of the victim-care unit is to provide legal, psychological, medical and social help to the victims of crime.

137. Another notable change in 1998 was the restructuring of the divisions of the Public Prosecutor's Office in Guatemala City. The divisions are as follows: the Women's Division, the Children's Division, the Division for Economic Crime, the Division for Administrative Crime and the Division for Drug-Related Crime. The restructuring will allow better use to be made of the human and physical resources already available to each division.

138. It is important to mention that a new division was established in 1998, the Division for Organized Crime, to deal with cases in such an important area of the administration of justice.

139. In coordination with the judiciary and the Ministry of the Interior, moreover, training courses were set up for prosecutors, judges and officers from the National Civil Police on the subjects "the scene of the crime" and "forensic-medicine investigations at the scene of the crime", in order to improve investigations and minimize impunity.

140. The action undertaken by the Public Prosecutor's Office to make its work more efficient led to 1,342 public hearings being held in 1998 during criminal trials, an increase of 404 public hearings as compared with 1997, as can be seen in the tables on the activities of the Public Prosecutor's Office in 1997 and 1998.

Public Prosecutor's Office

Activities at the national level
January-December 1997

Description	Subtotal	Total
Cases received		156 012
Reports	60 639	
Complaints	3 409	
Police precautionary measures	91 964	
Cases investigated and resolved in the preparatory stage*		97 970
Cases having other outcomes		58 042
Dismissed		2 056
Cases rejected		5 790
Opportunity criterion	5 301	
Conditional suspension of criminal prosecution	241	
Change of charges	248	
Decisions bringing proceedings to a close		30 940
Provisional closure	3 802	
Stay of proceedings	6 061	
Case shelved	21 077	
Disposed of through withdrawal or transfer		11 754
Withdrawals	5 837	
Transfer because of errors	5 917	
Charges brought		2 302
Abridged procedure	447	
Hearings held	938	
Pending	917	

Source: Planning Unit, Public Prosecutor's Office.

* Cases under investigation and resolved in the preparatory phase through stay of proceedings, case shelved, dismissal and withdrawal.

Public Prosecutor's Office

Activities at the national level
January-December 1998

Description	Subtotal	Total
Cases received		159 758
Reports	63 483	
Complaints	8 606	
Police precautionary measures	87 669	
Cases investigated and resolved in the preparatory stage		91 903
Cases having other outcomes		67 855
Dismissed		11 948
Cases rejected		828
Opportunity criterion	4 452	
Conditional suspension of criminal prosecution	265	
Change of charges	111	
Decisions bringing proceedings to a close		34 708
Provisional closure	4 091	
Stay of proceedings	4 867	
Case shelved	25 750	
Disposed of through withdrawal or transfer		13 969
Withdrawals	5 667	
Transfer because of errors	8 302	
Charges brought		2 402
Abridged procedure	508	
Hearings held	1 342	
Pending	552	

Source: Planning Unit, Public Prosecutor's Office.

141. It is also important to note that the reorganization in 1999 of 20 prosecutors' offices led to an increase in the number of staff from 281 before the reorganization to 510 afterwards, an 81 per cent increase. In the same year, 20 municipal prosecutors' offices were reorganized in the departments with the highest number of cases and the highest incidence of social conflict, and offices were opened in Malacatán, Santa Lucía Cotzumalguapa, Santa Eulalia, Villa Nueva, San Marcos, Escuintla, Huehuetenango and Guatemala City.

142. In another sphere of activity, it should be mentioned that, since January 1999, training courses have been provided for interpreters in the main Mayan languages - Mam, Quiché, Kanjobal, Kekchi, Achi, Pocomam and Kakchiquel. The courses are being delivered as a result of an agreement with the Rafael Landívar Private University, as part of the EDUMAYA programme. Staff members from the Public Prosecutor's Office are currently taking these courses.

3. Sentences in human rights cases

Xamán case

143. On 6 December 1999, the Fourteenth Division of the Court of Appeal sentenced 10 members of a military patrol to 12 years in prison (nine for the crime of voluntary manslaughter and three for grievous bodily harm). The events took place on 8 October 1995, when a military patrol opened fire on peasants from the Aurora 8 de Octubre community in a place called Xamán, municipality of Chisec, department of Alta Verapaz. The incident left 11 people dead and 27 wounded.

Cándido Noriega case

144. On 12 November 1999, the Trial Court in Totonicapán sentenced the former military commissioner Cándido Noriega to a non-commutable prison term of 220 years. The accused was found guilty of eight murders and two homicides committed in 1982 in the grounds of Tululché farm, municipality of Chiché, department of Quiché. The court has also instituted criminal proceedings against another military commissioner and the military commanders at the time.

Myrna Mack case

145. On 12 February 1993, the Third Criminal Court of First Instance sentenced Noel de Jesús Beteta Alvárez to 25 years' imprisonment for the murder of the anthropologist Myrna Mack. The incident took place on 11 September 1990. Beteta Alvárez was a member of the security section of the President's staff. Criminal proceedings are currently under way, in the Second Criminal Court of First Instance dealing with drug-trafficking and environmental crimes, against three officers from the Guatemalan army accused of being behind the death of the anthropologist Myrna Mack.

B. Formation of the National Civil Police

146. Article 62 of the National Civil Police Act, Decree No. 11-97 of Congress, stipulates the following: "The National Civil Police combines the human, physical, financial and any other resources of the National Police Departments and the Treasury Police". Article 63 states that: "The transition period for the formation of the National Civil Police shall be one year from the entry into force of this Act". That period expired in March 1998 and, in April of that year, Congressional Decree No. 29-98 amended article 63, extending the transition period until 4 September 1999 at the latest.

147. The transition process allowed the Treasury Police, which had been operating as a department of the Ministry of the Interior, to be disbanded. To date, around 3,700 members of the Treasury Police who had been demobilized have joined the National Civil Police after retraining at the National Civil Police Academy.

148. As at November 1999, a total of 14,906 officers had graduated from the National Civil Police Academy and are now stationed throughout the Republic.

149. The deployment of the new members of the National Civil Police has brought security to areas where there had been no police presence and has had a positive effect on ordinary and organized crime control while paying due attention to people's personal safety.

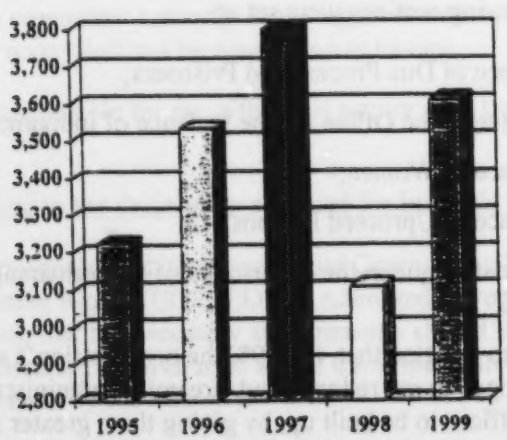
C. Reducing the number of permits to carry firearms

150. The illegal carrying of firearms in Guatemala has a negative impact on security. Notwithstanding the fact that a new bill on arms and munitions control is still under examination, as part of its efforts to clamp down on the use of weapons, the National Civil Police carried out various arms-seizure operations in 1999, confiscating 3,609 weapons of various calibres carried illegally by private individuals. Moreover, the amendments to article 71 of the Arms and Munitions Act contained in Decree No. 63-96 of 21 August 1996, setting an age limit of 25 years for carrying weapons, have been effective in discouraging young people below that age from carrying weapons and this in turn has made it possible better to limit and control the unnecessary proliferation of firearms. The table below gives figures for the number of weapons seized between 1995 and 1999.

Ministry of the Interior

Weapons seized nationwide

1995-1999



D. Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice

151. As mentioned in the previous report to the Committee, the Act establishing the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice is now in force, with the basic aim of providing protection to officials and employees of the judiciary, the civil security forces and the Public Prosecutor's Office, witnesses, experts, consultants, joint plaintiffs and persons at risk because of their involvement in criminal proceedings. It also includes protection for journalists. It must be admitted that its implementation has given rise to problems, particularly for budgetary reasons. Nevertheless, the reforms proposed by the Public Prosecutor's Office to overcome these problems are being studied and it is believed that, notwithstanding the above, putting them into practice could bring about changes that would allow the Act to be better implemented using available resources.

152. Between 1998 and 1999, protection and support were provided to 26 individuals, particularly prosecutors. At the moment, the protection service covers:

Protection of the beneficiary by security personnel from the Public Prosecutor's Office or from a private agency providing executive security services;

Change of residence for the beneficiary, sometimes including housing, transport and living costs;

Protection by security personnel of the beneficiary's residence and/or place of work.

E. Resources needed by the Human Rights Procurator

153. In 1998, the Human Rights Procurator's budget rose by 10 per cent as compared with 1997. Congress approved an increase of 7 per cent in the organization's 1999 budget as compared with 1998.

154. The support provided to the Human Rights Procurator in 1998 enabled new sections to be set up within the Procurator's Office to extend its coverage to populations at high risk of human rights violations. The following sections were set up:

Office for the Defence of Due Process and Prisoners;

Consensus Committee of the Office for the Defence of Indigenous People;

Office for the Defence of Women;

Office for the Defence of Uprooted Persons;

Branch offices in Coatepeque in the department of Quezaltenango and Poptún in the department of Petén.

155. It is also important to mention that, in 1998, the organization's administrative and financial structure was changed to cut red tape and streamline administrative operations. This allowed the departmental offices to be built up, by giving them greater administrative and logistical support within a decentralizing administrative approach that sees the branch offices as true representatives of the Procurator and the institution in their respective administrative areas.

F. Amendments to article 201-A of the Penal Code, which defines the offence of torture, to bring it into line with article 1 of the Convention

156. On 8 June 1998, in response to the Committee's recommendation, the Presidential Commission for Coordinating Executive Policy in the field of Human Rights sent the Private Secretary of the Office of the President a note containing a proposal for amendments to article 201 bis of the Penal Code so that, once it had been studied, it could be submitted to Congress as a bill proposed by the Executive. The proposal is currently under consideration by the Office of the Private Secretary to the President of the Republic.

157. The proposed amendment reads as follows:

"Article 201 bis (Torture). The offence of torture is committed by anyone who intentionally inflicts pain or suffering, whether physical or mental, on another person for the purposes of a criminal investigation or for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act he has committed or is suspected of having committed or intimidating or coercing that person or a third person, as a preventive measure, as a punishment or for any other purpose. Torture shall also be taken as the application of methods intended to destroy the personality of the victim or to diminish his or her physical or mental capacity, even if they do not cause physical pain or mental distress, whether on orders from or with the authorization, support or acquiescence of the State authorities.

A public official or other person acting in an official capacity who by acting in this manner commits the offence of torture directly or who, when in a position to prevent it, does not do so or who orders, incites or induces a third person shall also be considered to have committed this offence, as shall the members of groups or organized gangs having terrorist, insurgent or subversive aims or any other wrongful purpose.

Anyone who commits the offence of torture shall also be tried for the offence of kidnapping.

Pain or suffering arising only from, inherent in or incidental to lawful sanctions or action taken by a competent authority in the legitimate exercise of its duty and in order to safeguard public order shall not be considered as torture.

Anyone responsible for the offence of torture shall be liable to 5 to 15 years' imprisonment."

G. Process leading to the declaration provided for in article 22 of the Convention

158. Before this report was drafted, the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) submitted a proposal to the Ministry of Foreign Affairs suggesting that the necessary arrangements should be made with the Office of the President for the declaration referred to in article 22 of the Convention. This request is currently under consideration by the Ministry.

List of annexes*

1. Proposal by COPREDEH on draft amendments to article 201 bis of the Penal Code, which defines torture as an offence

2. Guide published by COPREDEH containing information to be provided by the National Civil Police to persons who have been arrested

3. Convention on Extradition signed at the Seventh International Conference of American States in Montevideo on 26 December 1933

4. Treaty of Cooperation between the Government of the Republic of Guatemala and the Government of the United Mexican States on Mutual Legal Assistance of 26 February 1996

5. Basic Human Rights Course - Officers' Handbook. MINUGUA and the Human Rights Procurator

6. Human Rights Instruments in the Administration of Justice. COPREDEH

7. National Civil Police Act, Congressional Decree No. 11-97

8. Congressional Decree No. 63-96 amending article 71 of the Arms and Munitions Act

9. Congressional Decree No. 70-96, Act concerning the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice

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* These annexes are available for consultation in the files of the Office of the United Nations High Commissioner for Human Rights.